

Amend Section 22-001 to read:

22-001 DEFINITIONS

22-001

- (a) (1) Adequate Notice - A written notice informing the claimant of the action the county intends to take, the reasons for the intended action, the specific regulations supporting such action, an explanation of the claimant's right to request a state hearing, and if appropriate, the circumstances under which aid will be continued if a hearing is requested, and for the California Work Opportunity and Responsibility to Kids (CalWORKs) Program, if the county action is upheld, that the aid pending must be repaid. In the CalFresh Program, see Section 63-504.2. The written notice must meet applicable requirements of Section 22-071. (Continued)
- (3) Aid - For purposes of this Division "aid" includes all state- or federally-funded public social services programs subject to a state hearing.
 - (A) Such public social services programs include, but are not limited to, the following: CalWORKs, the State administered programs for recipients of SSI/SSP (Division 46), Refugee Resettlement Program (RRP), the Cuban/Haitian Entrant Program (CHEP), the CalFresh Program (CF), the California Medical Assistance Program (Medi-Cal), Stage One Child Care, California Assistance Program for Immigrants (CAPI), Personal Care Services Program (PCSP), Kinship Guardian Assistance Payment Program (Kin-GAP), AFDC-Foster Care, AFDC-Extended Foster Care (EFC), Approved Relative Caregiver Funding Option Program (ARC), California Food Assistance Program (CFAP), the Social Services Programs described in Divisions 30 and 31 of the Manual of Policies and Procedures (MPP), Aid for the Adoption of Children Program (AAC), Adoption Assistance Program (AAP), Multipurpose Senior Services Program (MSSP), and assessments under *Harris v. CDSS* and the Resource Family Approval (RFA) program. (Continued)
- (6) Authorized Representative - An individual or organization that has been authorized by the claimant or designated by the Administrative Law Judge or Department pursuant to Sections 22-085 and 22-101 to act for the claimant in any and all aspects of the state hearing or administrative disqualification hearing. On the date of the claimant's death, his or her authorization for an authorized representative terminates, and the claim may continue only as provided in Section 22-004. (Continued)
- (c) (2) Claimant – The person who has requested a state hearing and is or has been any of the following:

(A) (Continued)

(H) An individual who seeks approval to provide foster care and has experienced an adverse home approval decision, or a person who receives a denial, rescission or exclusion under the Resource Family Approval process pursuant to Welfare & Institutions Code sections 16519.5 et seq. However, there is no right to a state hearing regarding child custody and child welfare service issues while that child is under the jurisdiction of the juvenile court. (See Section 22-003.15)

- (5) County or CWD - For purposes of this division, "county" or "CWD" generally refers to the county welfare department. The term "county welfare department" is used in Sections 22-001c.(7), 22-003 and 22-073 to mean the welfare department in the county in which the recipient resides or the county that has taken the action or inaction with which the recipient is dissatisfied. Any references to "county" or "CWD" may also refer to any state department or contractor whose actions may be subject to a state hearing. For purposes of Sections 22-053.113(f)465, 22-073.13, 22-073.252, .253, and .254, "county" or "CWD" shall not include the California Department of Health Care Services.

(f) (1) Filing Date

(A) All written requests for hearings shall be date stamped by the State Hearings Division or the CWD on the day the request is "received." Unless the evidence indicates otherwise, the filing date of the claimant's written request for a state hearing shall be determined as follows:

1. If the request is mailed to the State Hearings Division, or to the CWD, the postmark date of the envelope.
2. If the request was made electronically to the State Hearings Division, the date the request was submitted.
3. If the request was sent via facsimile to the State Hearings Division, or to the CWD, the date the fax was sent.
- ~~4~~2. If the request is delivered by hand to the State Hearings Division or to the CWD, the date stamped on the request for hearing.
- ~~5~~3. If the date cannot be determined by the methods described above, five days before the request was stamped "received" by the State Hearings Division or the CWD.
- ~~6~~4. If the date cannot be determined by Sections 22-001f(1)(A)1., 2., 3., 4, or 5, the date the request was signed. (Continued)

(l) (1) Language-Compliant Notice - A notice of action that meets the applicable requirement in (a) or (b) below:

(a) For notices of action provided by the ~~California Department of Social Services (CDSS)~~ in the claimant's primary language:

A written notice of action that complies with the requirements of Section 21-115.2 for a claimant who chose to receive written communications offered in his/her primary language pursuant to Section 21-116.21. There shall be a rebuttable presumption that a claimant chose to receive written communications offered in the claimant's primary language if the claimant identified a primary language other than English to the county pursuant to Section 21-201.211.

(b) For the Department's CDSS notices of action that the Department CDSS does not provide in the claimant's primary language: (Continued)

Authority cited: Sections 10553, 10554, ~~and~~ 10604, 10952.5, 11461.3, and 16519.5 et seq., Welfare and Institutions Code; and Senate Bill 84, Chapter 177, Statutes of 2007, Sections 32 and 33; Assembly Bill 12, Chapter 559, Statutes of 2012; Harris v. CDSS, Sacramento Superior Court Case No. 34-2010-8000438, order entered June 13, 2012.

Reference: Sections 10051, 10613, 10950 through 10967, 10963, 11209, 11253, 11323.6, 11323.8, 11466.23, 11466.235, ~~and~~ 11466.24, and 16519.5 et seq., Welfare and Institutions Code; Sections 6700, 6701, 11425.10, and 11425.60, Government Code; 45 CFR 205.10; 45 CFR 205.10(a)(4)(i)(B); and 45 CFR 255.4(j)(1) and Part 256.

Amend Section 22-003 to read:

22-003 **RIGHT TO A STATE HEARING**

22-003

- .1 A state hearing shall be available to a claimant who is dissatisfied with a county action or inaction on a county-administered state aid program and requests a hearing in the manner set forth below.
- .11 There is no right to a state hearing regarding a CalFresh or CalWORKs administrative disqualification, unless the issue is the CWD's method of implementing a CalFresh or CalWORKs administrative disqualification hearing decision. (See Division 22, Chapters 22-200 and 22-300, Division 20, Chapter 20-300, and Division 63, Section 63-805.)
- .12 (Continued)
- .14 There is no right to a state hearing regarding child custody and child welfare service issues while that child is under the jurisdiction of the juvenile court. All issues regarding the child's custody shall be heard by the juvenile court, including but not limited to those issues left to the discretion of the CWD or probation department by the juvenile court.
- .141 A claimant who has been denied home approval to provide foster care to a child, as described in Section 22-001(c)(2)(H), or who has received a denial, rescission, or exclusion under the Resource Family Approval process pursuant to Welfare & Institutions Code sections 16519.5 et seq., has a right to a state hearing to dispute the home approval decision, but no right to a state hearing to dispute the placement or removal of a child.
- .15 There is no right to a state hearing regarding overpayments made to foster care providers including group homes and foster family agencies where the claimant entered into a voluntary repayment agreement, under Section 45-305.231.

Authority cited: Sections 10553, 10554, ~~and~~ 10604, and 16519.5 et seq., Welfare and Institutions Code; ~~and~~ Senate Bill 84, Chapter 177, Statutes of 2007, Sections 32 and 33.

Reference: Sections 10613, 10950, 10951 through 10967, 11209, 11461.3, 11466.23, 11466.235, and 11466.24, Welfare and Institutions Code; 45 CFR 205.10; 45 CFR 235.112(c)(2); 45 CFR 255.4(j)(1) and 256.4(b); and *Madrid v. McMahon* (1986) 183 Cal. App. 3rd 151, *In Re Jennifer G.* (1990) 221 Cal App. 3rd 752, ~~and~~ *In Re Moriah T.* (1994) 23 Cal. App. 4th 1366, and Harris v. CDSS, Sacramento Superior Court Case No. 34-2010-8000438, order entered June 13, 2012.

Amend Section 22-004 to read:

22-004 REQUEST FOR A STATE HEARING

22-004

- .1 (Continued)
- .2 A written or electronic request concerning county-administered state aid programs ~~shall~~may be filed with CDSS or the CWD; ~~and for~~ For all other state aid programs, the request shall be filed with CDSS~~the California State Department of Social Services in Sacramento.~~
- .21 A written request for hearing may be made in any form, including, but not limited to, the reverse side of ~~the~~a Notice of Action. (Continued)
- .22 When a written request for a state hearing is received by the CWD, a copy of the written request shall be forwarded to the State Hearings Division ~~in Sacramento~~ within three working days after receipt unless the CWD is given authority by the Chief Administrative Law Judge to directly enter the hearing request into the state hearing computer system online. The county shall retain the original hearing request and shall provide the original or a copy of the request ~~it~~ to the Administrative Law Judge at the hearing. (Continued)
- .3 An oral request shall be filed in person or by telephone at the California Department of Social Services~~in Sacramento.~~

HANDBOOK BEGINS HERE

- .31 A toll-free number is available for this purpose.

HANDBOOK ENDS HERE

- .4 If a claimant dies after a request for a state hearing has been filed, yet before a hearing has been held, the proceeding may only be continued by, or on behalf of, the representative of the ~~claimant's~~decedent's estate. (Continued)

Authority cited: Sections 10553 and 10554, Welfare and Institutions Code.

Reference: Sections 10553, 10554 and 10965, Welfare and Institutions Code; and Section 44, Probate Code.

Amend Section 22-009 to read:

22-009 TIME LIMIT ON REQUEST FOR A STATE HEARING

22-009

- .1 The request for a state hearing shall be filed within 90 days after the date of the action or inaction with which the claimant is dissatisfied.
- .11 (Continued)
- .13 Notwithstanding MPP section 22-009.11 and .12 above, the claimant may request a hearing after 90 days, but no more than 180 days (except as provided in 22-009.14), after the mailing of the notice if the claimant has good cause for the delay.
- .131 Good cause means a substantial and compelling reason beyond the claimant's control, considering the length of the delay, the diligence of the claimant, and the potential prejudice to the other party.
- .132 The claimant's inability to understand the adequate and language-compliant notice, in and of itself, shall not constitute good cause.
- .14 Nothing in MPP section 22-009 shall preclude the application of the principles of equity jurisdiction as provided by law.
- .2 ~~A~~For all aid other than IHSS, the recipient shall have the right to request a state hearing to review the current amount of aid. At the claimant's request, such review shall extend back as many as 90 days from the date the request for hearing is filed and shall include review of any benefits issued during the entire first month in the 90-day period. In addition to an IHSS recipient having the right to request a state hearing if she or he is dissatisfied with a county action or inaction pursuant to Section 22-009.1, an IHSS recipient also has the right to request a state hearing when a change of circumstances or medical condition has been reported to the county, and the claimant is dissatisfied with the county's response.~~This review shall only apply to facts that occurred during the review period.~~

HANDBOOK BEGINS HERE

- .21 Example #1: The county issues the claimant adequate and language-compliant notice on January 20, 2005 advising him or her that the Medi-Cal share of cost is increased from \$100 to \$200 effective February 1, 2005. The claimant receives this notice but does not request a hearing until July 6, 2005. Although the claimant's hearing request is filed more than 90 days after the January 20, 2005 notice was issued, the claimant has the right to a state hearing to review the share of cost for the current month (i.e., July 2005) and the review will extend back 90 days to include all of April, May and June 2005. There can be no review of the February or March 2005 share of cost because the hearing

request is untimely as to those months. The review will be based only on the relevant facts that occurred during April, May, June, and July, 2005, including the claimant's income and deductions for those months as relevant to the share of cost. The review will not include facts that occurred prior to the review period.

22. Example #2: The claimant receives timely, adequate, and language-compliant notice of IHSS hours authorized effective June 1, 2016. In December 2016, the claimant reports changed circumstances affecting her need for services. The county reassesses the claimant's need but does not change her IHSS hours, and the claimant requests a hearing. The claimant has a right to dispute the county's reassessment within the time allowed by Section 22-009.1.
23. Example #3: The claimant receives timely, adequate, and language-compliant notice of IHSS hours authorized effective June 1, 2016. In December 2016, the claimant reports changed circumstances affecting her need for services. The county does not reassess the claimant's need or change the claimant's hours. The claimant has a right to a state hearing to dispute the unchanged hours and the failure to reassess.
24. Example #4: The claimant receives timely, adequate, and language-compliant notice of IHSS hours authorized effective July 1, 2016. In December 2016, the claimant requests a hearing to dispute the notice. There are no facts to support good cause for late filing or equitable jurisdiction. There is no evidence that the county was aware of any change of circumstances. There is no county action or inaction to review. The 90-day look-back does not apply.

HANDBOOK ENDS HERE

Authority cited: Sections 10553 and 10554, Welfare and Institutions Code; and Senate Bill 84, Chapter 177, Statutes of 2007, Sections 32 and 33.

Reference: Sections 10950, 10951, 11466.23, 11466.235, ~~and~~ 11466.24, and 12301.1, Welfare and Institutions Code; Assembly Bill 921, Chapter 502, Statutes 2007, Section 1; and *Morales v. McMahon* (1990) 223 Cal App. 3rd 184, 272 Cal. Rptr. 688.

Amend Section 22-045 to read:

22-045 SETTING THE HEARING

22-045

- .1 (Continued)
- .2 The hearing shall be conducted at a reasonable time, date, and place.
 - .21 In the CalFresh Program, the State Hearings Division shall expedite the scheduling of hearings requested by households who expect to leave the State. See Section 22-073.243.
 - .22 Upon request, the State Hearings Division shall expedite the scheduling of hearings in the following circumstances:
 - .221 Hearings involving expedited CalFresh;
 - .222 Hearings involving CalWORKs Immediate Need, including a failure to process applications within 15 days after payment of Immediate Need benefits to the claimant, and denial or failure to issue Expedited Grant funds as provided in section 40-129.8 and 40-129.9;
 - .223 Hearings involving CalWORKs Homeless Assistance;
 - .224 Hearings involving the denial of supportive services for welfare-to-work, which would result in the loss of employment or inability to participate or make satisfactory progress in a Self-Initiated Program (SIP), approved educational activity, or training activity; and
 - .225 Hearings involving any other issue of urgency that the State Hearings Division deems necessary.
- .3 Except as provided in section 22-045.41, tThe State Hearings Division shall mail or provide to the claimant and the county a written notice of the time and place of the hearing at least ten days prior to the hearing. (Continued)
- .4 Upon receipt of an expedited hearing request, the State Hearings Division shall obtain information necessary from the claimant, the claimant's authorized representative, and the county to grant or deny the request.
 - .41 If the request is granted, the hearing shall be set on an expedited basis with at least a 10-calendar day notice of the hearing to the claimant, the claimant's authorized representative, and the county. The hearing notice may be in writing or by other electronic means.

- .42 If the request is denied, the State Hearings Division shall notify the parties of the denial in writing or by other electronic means and schedule the matter for a regular state hearing.
- .43 The county shall have its Statement of Position available to the claimant and authorized representative two working days before the scheduled expedited hearing. The State Hearing Division shall reset the hearing immediately upon the claimant's request for a postponement if the Statement of Position is not available as required.
- .44 The Administrative Law Judge shall issue a decision in an expedited hearing within five business days of the record closure.

Authority cited: Sections 10553 and 10554, Welfare and Institutions Code.

Reference: Sections 10553 and 10554, Welfare and Institutions Code; 7 CFR 273.15(b); and 45 CFR 205.10(a)(2).

Amend Section 22-050 to read:

22-050 EVIDENCE

22-050

.1 (Continued)

.2 (Continued)

.21 (Continued)

.23 The Administrative Law Judge shall exclude evidence which is privileged under the Evidence Code if the privilege is claimed in accordance with law. If a party claims a legal privilege, both the claim of privilege, and any objections to the claim of privilege, must be made on the record. All parties must be allowed to examine any evidence that is admitted to the record. Any evidence excluded from the record cannot be relied on or considered by the Administrative Law Judge. (Continued)

Authority cited: Sections 10553 and 10554, Welfare and Institutions Code.

Reference: Sections 10553 and 10554, Welfare and Institutions Code.

Amend Section 22-051 to read:

22-051 THE EXAMINATION OF RECORDS AND ISSUANCE OF SUBPOENAS 22-051

.1 (Continued)

.4 Before the hearing has commenced, the Chief Administrative Law Judge or his/her designee shall be permitted to, upon the written or oral request of the claimant or the CWD, issue a:

.41 (Continued)

.43 If the witness claims that the requested material is privileged, the witness shall state the factual and legal basis for the claim of privilege. The statement shall be provided to the party requesting the subpoena duces tecum and provided to the Administrative Law Judge at the hearing.

.5 After the hearing has commenced, the Administrative Law Judge assigned to the case shall be permitted to issue a subpoena or subpoena duces tecum as necessary. If a party claims a legal privilege, both the claim of privilege, and any objections to the claim of privilege, must be made on the record. All parties must be allowed to examine any evidence that is admitted to the record. Any evidence excluded from the record cannot be relied on or considered by the Administrative Law Judge.

.6 The party requesting the subpoena or subpoena duces tecum shall have the responsibility of having it served. The service of the subpoena shall be made to allow the witness subpoenaed a reasonable time for preparation and travel to the place of attendance.

.7 If a party or witness fails to comply with a subpoena or subpoena duces tecum, the Administrative Law Judge may refer the matter to the head of the department for action under Government Code Section 11187.

Authority cited: Sections 10553 and 10554, Welfare and Institutions Code.

Reference: Sections 10553 and 10554, Welfare and Institutions Code, Section 11187, Government Code; and Section 1987, Code of Civil Procedure.

Amend Section 22-054 to read:

22-054 DISMISSALS

22-054

.1 (Continued)

.2 (Continued)

HANDBOOK BEGINS HERE

- (1) See Section 22-072.71 regarding the effect of withdrawal on aid pending.

HANDBOOK ENDS HERE

- (2) If the withdrawal is unconditional, the hearing request shall be immediately dismissed.
 - (A) The dismissal shall be without prejudice in that the claimant may be permitted to file a new hearing request raising the identical issue provided that the request is filed timely pursuant to Section 22-009.
- (3) If the withdrawal is conditional:
 - (A) The withdrawal shall be accompanied by an agreement signed by the claimant and by the county.
 - (B) Any agreement under this provision shall provide that the actions of both parties will be completed within 30 days from the date the conditional withdrawal form is signed by both parties and received by the county. If the claimant's delay in providing information causes the county to be unable to complete its actions within 30 days, then the 30-day period may be extended to a date up to 30 days after the claimant provides the information. See Section 22-071.1(c) ~~15~~ regarding adequate notice with conditional withdrawal.
 - (C) ~~After~~When the county issues notice of its redetermination under Section 22-071.1(c), the request is dismissed. The claimant has a right to

request a new hearing to dispute the notice of redetermination if the claimant does not reinstate the hearing request within the time limits set forth in Section 22-009, the request shall be dismissed.

(D) If the county fails to issue notice of its redetermination under Section 22-071.1(c) within the time required by Section 22-054.211(b)(3)(B), the hearing will be rescheduled at the claimant's request.

(E) Any failure to comply with a conditional withdrawal agreement may be reported as a compliance issue under Section 22-078.3.
(Continued)

- .3 A request for hearing or portion thereof shall be dismissed by a written hearing decision when:
- .31 The issue is not within the jurisdiction of a state hearing as defined in Section 22-003.1 and Welfare and Institutions Code Section 10950. (Continued)
- .34 The Administrative Law Judge determines that the identical issue has been the subject of a previous state hearing decision on the merits involving the same claimant. (Continued)
- .38 The request for hearing raises an issue that is moot because it has been fully resolved by a final action.
- .4 The Chief Administrative Law Judge, or his/her designee, shall have authority to dismiss, without a hearing and written decision, a hearing request which is subject to dismissal under Sections 22-054.31, ~~32~~ or .37. (Continued)

Authority cited: Sections 10553 and 10554, Welfare and Institutions Code.

Reference: Sections 10553 and 10554, Welfare and Institutions Code, and 45 CFR 205.10(a)(5)(8).

Amend Section 22-062.5 to read:

22-062 ACTION BY THE DIRECTOR

22-062

.1 (Continued)

- .5 In cases involving allegations of discrimination by the Department of Social Services or by county staff in relation to programs administered by the Department of Social Services and preparation of a report in accordance with Section 21-203.2, the allegations case shall be referred remanded to the Civil Rights Bureau of the Department of Social Services county for the preparation of a report in accordance with Section 21-203.12. In cases involving allegations of discrimination by the Department of Health Care Services or by county staff in relation to programs administered by the Department of Health Care Services, the allegations shall be reported to the Department of Health Care Services Office of Civil Rights.

Authority: Sections 10533 and 10534, Welfare & Institutions Code

Reference: Sections 10553 and 10554, Welfare and Institutions Code; Section 51, California Civil Code; Section 11135, California Government Code; USDA, Food and Nutrition Service, FNS Instruction 113-7 Part X (A); 28 CFR 42.408(b), (c) and (d); and Title II of the Americans With Disabilities Act of 1990, P.L. 101-336.

Amend Section 22-065 to read:

22-065 REHEARING

22-065

- .1 The claimant or the county may file a request for a rehearing.
- .11 (Continued)
- .12 If the request is to permit presentation of additional evidence that was not in the requesting party's custody or available at the time of the hearing and is now available, the request shall:
 - .121 Describe and submit the additional evidence, or, if the evidence is available but cannot be submitted, explain why the evidence is available but cannot be submitted;
 - .122 State why it was not previously introduced; ~~and~~
 - .123 Explain its materiality; ~~and~~;
 - .124 Explain how the additional evidence ~~will~~ could have changed the outcome of the hearing decision.
- .13 The request shall state the date the decision was received.
 - .131 In the absence of such statement, the date of receipt shall be either five ~~three~~ days after the date of the postmark on the envelope containing the decision or five ~~three~~ days after the date the decision was released by the Department, whichever is later.
- .14 The postmark on the envelope containing the rehearing request shall be the filing date.
 - .141 If the postmark on the envelope is unreadable, the filing date shall be the date the request for rehearing is signed.
 - .142 If the postmark is unreadable and the request for rehearing is undated, the filing date shall be five ~~three~~ days prior to the date the rehearing request is stamped "received" by the Department.
- .15 Notwithstanding 22-065.11, the claimant may request a rehearing more than 30 days after the issuance of the Director's decision, if the claimant did not receive a copy of the decision of the Director, or if there is good cause for filing beyond the 30-day period as determined by the Director.

.151 Good cause means a substantial and compelling reason beyond the claimant's control. In determining good cause, the Director shall consider the length of the delay, the diligence of the claimant, and the potential prejudice to the other party. A request shall not be granted if filed more than 180 days after the decision issuance date, except as provided by 22-065.16.

.152 The claimant's inability to understand the adequate and language-compliant notice, in and of itself, shall not constitute good cause.

.16 Nothing in this section shall preclude the application of the principles of equity jurisdiction as otherwise provided by law.

.2 (Continued)

.3 The Director shall grant or deny the request ~~no earlier than five nor later than the 35th~~15 working days after the request for rehearing is filed~~it is received by the State Hearings Division.~~

~~.31 If the Director does not act within this period, the request for rehearing shall be deemed denied.~~

.4 (Continued)

.8 A rehearing request shall be permitted to be withdrawn at any time before the Department has acted upon the request.

.9 After a rehearing request has been granted, it shall be permitted to be withdrawn by the requesting party subject to the approval of the Chief Administrative Law Judge, his/her designee or the Administrative Law Judge.

Authority cited: Sections 10553, 10554 and 10960, Welfare and Institutions Code.

Reference: Sections 10553, 10554 and 10960, Welfare and Institutions Code.

Amend Section 22-069.121 to read:

22-069 COUNTY WELFARE RESPONSIBILITY

22-069

.1 (Continued)

.12 (Continued)

.121 Submission of the original or a copy of the hearing request to the
Administrative Law Judge at the hearing. (Continued)

Authority cited: Sections 10553, 10554 and 10960, Welfare and Institutions Code.

Reference: Sections 10553, 10554 and 10960, Welfare and Institutions Code.

Amend Section 22-071 to read:

22-071 ADEQUATE NOTICE

22-071

- .1 Except as provided in Section 22-071.2, the county shall give the claimant adequate notice as defined in Section 22-001(a)(1) in the following instances:

~~(a)-11~~ When aid granted or increased.

~~(b)-12~~ For CalWORKs and CalFresh cases, when aid is denied, decreased, not changed following a recipient mid-period report, cancelled, or discontinued. When aid is not changed due to a voluntary recipient mid-period report, the notice shall be sent as soon as administratively possible, but no later than thirty days from the date the voluntary report is made

~~(c)-13~~ For all cases other than CalWORKs and CalFresh cases, when aid is denied, decreased, suspended, cancelled, discontinued, or terminated.

.131 For purposes of Sections 22-071.12 and .13, a decrease shall include an overpayment adjustment and balancing.

~~(d)-14~~ When the county demands repayment of an overpayment or a CalFresh overissuance.

~~(e)-15~~ When the county takes action after the claimant has conditionally withdrawn a request for a state hearing (see Section 22-054).

~~(f)-16~~ When a CalFresh application is pended (see Section 63-504.24).

~~(g)-17~~ When the county determines that immediate need does not exist (see Section 40-129).

~~(h)-18~~ When the county takes action regarding compliance related issues resulting from state hearing decisions (see Sections 22-001c(3) and 22-078).

~~(i)-19~~ When the county takes action to change the manner or form of payment to a protective or vendor payment.

~~(j)~~ When the county makes an adverse home approval decision on an application of a relative or non-relative extended family member for approval to provide foster care as described in *Harris v. CDSS* or under the Resource Family Approval program.

- .2 The adequate notice requirement is not applicable to certain actions involving Social Services (Division 30) and CalFresh (MPP Section 63-504.266).

- .3 In all cases, the notice shall be prepared on approved Department forms or a county substitution which has been approved by the ~~California Department of Social Services~~, including but not limited to a county-developed computer equivalent.
- .4 The notice shall be prepared in clear, nontechnical language.
- .5 If a claimant submits a request for a state hearing on the back of the notice, a duplicate copy of the notice shall be provided to the claimant on request.
- .6 When appropriate, the notice shall also inform the claimant regarding what information or action, if any, is needed to reestablish eligibility or determine a correct amount of aid.

Authority cited: Sections 10553, 10554, ~~and~~ 10604, 10960, Welfare and Institutions Code.

Reference: Sections 10553, 10554, 10613, 11209, 11265.1, 11265.2, ~~and~~ 11265.3, and 16519.5 et seq., Welfare and Institutions Code; and 45 CFR 255.4(j)(1) and 256.4(b); Harris v. CDSS, Sacramento Superior Court Case No. 34-2010-8000438, order entered June 13, 2012.

Amend Section 22-072.5 to read:

22-072 TIMELY NOTICE - AID PENDING HEARING

22-072

.1 (Continued)

.5 Except as provided in Sections 22-054.1 and 22-072.6, when the claimant files a request for a state hearing prior to the effective date of the Notice of Action, which is subject to Section 22-072.1, aid shall be continued in the amount that the claimant would have been paid if the proposed action were not to be taken, provided the claimant does not voluntarily and knowingly waive aid. This section shall not apply to CalWORKs (Welfare to Work) supportive services payments when a timely notice of the change or termination of supportive services has been sent (see Sections 42-750.213, 42-750.4). However, child care services may be continued as aid pending under Section 47-420.32, when appropriate. In the CalFresh Program, benefits shall be continued on the basis authorized immediately prior to the notice of adverse action. (Continued)

.6 Aid pending shall cease when the decision is adopted and released, or:

.61 The claimant withdraws or abandons the request for a state hearing (see Section 22-054.2).

.611 If the withdrawal is conditional, the county shall provide aid pending retroactively and prospectively if the request for a hearing is subsequently reinstated (see Section 22-054.211, provided that the claimant has complied with conditions set forth in the agreement accompanying the conditional withdrawal.

.612 If the withdrawal is conditional, aid pending shall continue until the county issues a new notice informing the claimant of its action in compliance with the conditional withdrawal agreement. The claimant's right to aid pending after that notice of action will depend on whether the claimant requests a hearing within the time allowed in Section 22-072.5.

~~.613~~ If a hearing request is dismissed because the claimant failed to attend the scheduled hearing, but the decision dismissing the claim is set aside and a new hearing is granted as specified in Section 22-054.222, the county shall reinstate any applicable aid pending.

.62 The Administrative Law Judge determines, based on the record of the state hearing, that the issue involved in such hearing is one of law or change in law and not one of incorrect application of law.

.621 If the request for hearing involves multiple issues, the Administrative Law Judge shall determine ~~that whether~~ as to certain issues aid pending is

appropriate ~~while~~ as to some ~~other~~-issues but not others ~~aid pending is not appropriate~~. In such cases, aid may be reduced to the extent aid pending is not appropriate.

- .622 If the matter is rescheduled for further hearing as specified in Section 22-062.13, ~~the~~ any aid pending determination made by the Administrative Law Judge at the original hearing shall be considered void. Aid shall be retroactively reinstated and continued until at least the date of the further hearing in the amount the claimant would have been paid if the proposed action were not to be taken, provided the claimant does not voluntarily and knowingly waive aid.

Authority cited: Sections 10553, 10554, and 10604, Welfare and Institutions Code.

Reference: Sections 10553, 10554, 10613, 11209, 11265.1, 11265.2, ~~and~~ 11265.3, and 16519.5 et seq., Welfare and Institutions Code; 7 CFR 273.15(c)(4); 45 CFR 205.10; 45 CFR 255.2(h)(2); 45 CFR 256.2(c); and 45 CFR 256.4(d).

Amend Section 22-073 to read:

22-073 COUNTY WELFARE AGENCY RESPONSIBILITY PRIOR TO THE STATE HEARING 22-073

.1 (Continued)

- .11 Such payment shall be released for electronic benefit transfer, or placed in the U.S. Mail, or available for hand-delivery to the recipient (if agreed to by the county and recipient) within five working days of the receipt of the hearing request by the appropriate agency as specified in Section 22-004, or by the date the regular scheduled aid payment would otherwise have been paid to the recipient, whichever is later.

(See above for amendments to Section 22-073.12, discussed with Section 22-004.1, .2, .22, and 3)

.2 (Continued)

.21 (Continued)

- .211 If the request for hearing does not clearly set forth the claimant's basis for appeal, the county representative shall immediately contact the claimant or authorized representative for clarification. (Continued)

.23 (Continued)

- .231 If the county representative concludes that the county action was incorrect, the county representative shall contact the claimant or authorized representative and attempt to resolve the case without a hearing.

- (a) The county representative shall have the authority to make such a decision. The conditional withdrawal procedure described in Section 22-054.21 is usually appropriate in such instances.

.232 (Continued)

(a) (Continued)

- (b) Determine whether if there are any other issues ~~further contentions~~ which the claimant will attempt to raise at the hearing; and (Continued)

.251 (Continued)

(a) (Continued)

(c) If the county is unable to identify the issue raised in the hearing request despite its best efforts as required by 22-073.2, the county may prepare a position statement summarizing the extent of the county's review of the hearing request and its conclusion on whether there is a county action disputed, and listing the attempts to contact the claimant to clarify the issue for hearing. (Continued)

Authority cited: Sections 10553 and 10554, Welfare and Institutions Code.

Reference: Sections 10553 and 10554, Welfare and Institutions Code.

Amend Section 22-085 to read:

22-085 AUTHORIZED REPRESENTATIVE

22-085

- .1 The claimant may authorize a person or organization to represent him or her during all aspects of the hearing process by signing and dating a written statement to that effect or by stating at the hearing that the person is so authorized. If the claimant authorizes more than one person or organization, the claimant shall designate a lead authorized representative for all aspects of the hearing process, including those described in Sections 22-085.3 and .4. ~~If the claimant is not present at the hearing, the written statement authorizing a representative to act on behalf of the claimant for hearing purposes shall be signed and dated by the claimant on or after the date of the action or inaction with which the claimant is dissatisfied.~~
- .11 The authorization may be limited in scope or duration by the claimant, and may be revoked by the claimant at any time. The authorization shall be presumed to be a valid authorization. Such presumption is rebuttable.
- .12 If the claimant is not present at the hearing and the written authorization does not meet the requirements set forth in Section 22-085.1, the Administrative Law Judge may proceed with the hearing if the circumstances indicate that the claimant wishes to proceed with the hearing process. In such cases, an amended authorization shall be submitted after the hearing as described in Sections 22-085.221 and .222.
- .13 For purposes of Section 22-085, "competent" means being able to act on one's own behalf in business and personal matters.
- .14 If the claimant is not competent and has a conservator appointed by the court, only the conservator has authority to appoint an authorized representative to represent the claimant at the hearing.

HANDBOOK BEGINS HERE

- .15~~3~~ The above requirements are for hearing purposes only. For pre-hearing requirements and the release of information to authorized representatives, see Section 19-005.

HANDBOOK ENDS HERE

.2 (Continued)

.21 (Continued)

- .23 If, at the hearing, the person cannot swear or affirm under penalty of perjury that the claimant has authorized him or her to act as the claimant's authorized representative because the claimant is incompetent, in a comatose condition, suffering from amnesia

or a similar condition, the hearing may proceed at the Administrative Law Judge's discretion if the person is a relative, or a person who has knowledge of the claimant's circumstances and who completed and signed the Statement of Facts on the claimant's behalf, or the person is the claimant's attorney or is an advocate working under the supervision of the claimant's attorney.

.24 If the claimant is not competent, and there is no one who qualifies under .22 above to represent the claimant at the hearing, the Administrative Law Judge may allow an individual with knowledge about the claimant's circumstances to represent the claimant at the hearing if the Administrative Law Judge determines that the representation is in the claimant's best interests.

.254 If the attorney or non-attorney does not state on the hearing record that the claimant is mentally competent and has authorized him or her to act as authorized representative, the attorney or non-attorney shall not be recognized as authorized representative, the hearing shall not proceed and the hearing request shall be dismissed by written decision unless Section 22-085.23 applies.

.3 (Continued)

.4 (Continued)

.41 (Continued)

.42 If the county fails to send a copy of a notice to the authorized representative as required in this Section 22-085.4, an Administrative Law Judge may consider that fact in determining whether notice was received by the claimant under Section 22-009.11, and whether the claimant had good cause for delay under Section 22-009.13.

Authority cited: Sections 10553, ~~and~~ 10554, and 14014.5, Welfare and Institutions Code.

Reference: Sections 10553, 10554, 10950, and 10955, Welfare and Institutions Code and 45 CFR 205.10.